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MICHAEL RODAK, JR., CLERK

In the Supreme Court
of the United States

OCTOBER TERM, 1976

No. **76-800**

Charles E. Allen
and
John W. Horn, et al,
Petitioners,

vs.

Columbus Coated Fabrics,
a Division of Borden Chemical Co.;
Eastman Kodak Company, et al.
Respondents.

PETITION FOR WRIT OF CERTIORARI

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- (a) an employer and his agents are totally immune from suit for damages caused by their negligent or intentional acts;
- (b) the legislative scheme encourages employers to maintain their work place in an unsafe condition, dangerous to the health and welfare of their employees.

2. Are employees who are covered by the Ohio Workmen's Compensation laws (Ohio Constitution, Article II, Section 35; Ohio Revised Code, Section 4123.74; Ohio Revised Code, Section 4123.741) deprived of their right to equal protection contrary to the Fourteenth Amendment to the United States Constitution, where the Ohio legislative scheme arbitrarily maintains a class of injured persons who have no right to sue their employer and his agents for negligence or intentional acts?	9
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Columbus Coated Fabrics,
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Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO

The Petitioners, Charles E. Allen, John W. Horn, and 68 other employees of the respondents, and their respective spouses, pray for a writ of certiorari to review the orders of the Supreme Court of Ohio of September 10, 1976, overruling their motion to certify the record and dismissing, *sua sponte*, petitioners' appeals of right from separate judgments entered on February 3, 1976, and May 25, 1976, by the Court of Appeals for Franklin County, Ohio, affirming the judgment of the Court of Common Pleas of Franklin County, Ohio.

OPINION BELOW

The Supreme Court of Ohio rendered no opinion. The Court of Appeals of Franklin County rendered a written decision on February 3, 1976 (Appendix A-1, *infra*, p.16), applying to 64 of the petitioners, and adopted the same decision on May 25, 1976, applying to 6 of the petitioners. Neither decision was reported.

JURISDICTION

The orders of the Supreme Court of Ohio, entered on September 10, 1976, overruling petitioners' motion for orders directing the Court of Appeals of Franklin County, Ohio, to certify its records (Appendix B-1, B-2) and dismissing, *sua sponte*, the appeals of right (Appendix C-1, C-2) are attached hereto. The jurisdiction of this Court is invoked under Rule 19 of this Court and 28 U.S.C. 1257 (3), which provides for a review of final judgments rendered by the highest Court of a State by writ of certiorari, where the petitioners have been denied due process of law and equal protection under Amendments Five and Fourteen of the United States Constitution.

QUESTIONS PRESENTED

1. Are employees who are covered by the Ohio Workmen's Compensation laws (Ohio Constitution, Article II, Section 35; Ohio Revised Code, Section 4123.74; Ohio Revised Code, Section 4123.741) deprived of their right to life and liberty without due process of law, contrary to the Fifth and Fourteenth Amendments to the United States Constitution, where, as a result of these Ohio statutes—

(a) an employer and his agents are totally immune from suit for damages caused by their negligent or intentional acts;

(b) the legislative scheme encourages employers to maintain their work place in an unsafe condition, dangerous to the health and welfare of their employees.

2. Are employees who are covered by the Ohio Workmen's Compensation laws (Ohio Constitution, Article II, Section 35; Ohio Revised Code, Section 4123.74; Ohio Revised Code, Section 4123.741) deprived of their right to equal protection contrary to the Fourteenth Amendment to

the United States Constitution, where the Ohio legislative scheme arbitrarily maintains a class of injured persons who have no right to sue their employer and his agents for negligence or intentional acts?

3. Are employees who are covered by the Ohio Workmen's Compensation laws (Ohio Constitution, Article II, Section 35; Ohio Revised Code, Section 4123.74; Ohio Revised Code Section 4123.741) deprived of their right to property without due process of law, contrary to the Fourteenth Amendment to the United States Constitution, where, as a result of these Ohio statutes—

(a) an employer and his agents are totally immune from suit for damages caused by their negligent or intentional acts;

(b) the compensation scheme is specifically designed to reimburse an injured employee for only a fraction of his actual damages.

PERTINENT CONSTITUTIONAL AND STATUTORY PROVISIONS

The text of pertinent constitutional and statutory provisions applicable herein is contained in Appendix D, *infra*, p. 35. These relevant provisions are:

Fifth Amendment to Constitution of the United States;
Fourteenth Amendment to Constitution of the United States;

Ohio Constitution, Article II, Section 35;

Ohio Revised Code: Sections 4101.11, 4101.12, 4123.01, 4123.54, 4123.74 and 4123.741.

STATEMENT OF THE CASE

In September and October, 1973, an outbreak of toxic chemical poisoning was identified at the Columbus Coated Fabrics manufacturing plant in Columbus, Ohio. In all, over 100 employees out of a work force of approximately 1,160 were afflicted with a nerve disorder of long-term, insidious onset and sometimes crippling consequences. Of those afflicted, many have subsequently become permanently and totally disabled. The magnitude of the problem was discovered through a physical testing program on all plant employees, conducted by the Ohio Department of Health after local physicians noted an abnormally high concentration of nerve disease complaints among the plant workers.

Written complaints of the unsafe working conditions in the plant had been filed with the federal Occupational Safety and Health Administration by plant employees as early as April, 1973. Occupational Safety and Health Administration investigators inspected the plant and found the facility to be below federal safety standards. Of air samples taken during the spring and early summer of 1973, over one-half contained concentrations of known, toxic chemical fumes well in excess of safe working standards published by both the Ohio Department of Health and the Occupational Safety and Health Administration. In May, 1973, the Occupational Safety and Health Administration notified Columbus Coated Fabrics management of proposed penalties for failure to maintain a safe work place. In August, 1973, Columbus Coated Fabrics was cited and fined by the Occupational Safety and Health Administration for failing to comply with safety regulations and orders. In September, 1973, follow-up air samples were taken. At this time, near lethal concentrations of known, toxic chemical fumes were discovered in working areas.

During 1973, until October, 1973, the Columbus Coated Fabrics management continued to operate the plant, having knowledge that their employees were being exposed daily to toxic and almost lethal concentrations of chemical fumes. In the continued operation of the plant, the Columbus Coated Fabrics management knowingly violated specific State safety regulations and safe work place laws. The management continued to use manufacturing practices which it knew to be dangerous, yet which resulted in a higher production rate. The management, in conjunction with the plant physician, suppressed the results of the various federal investigations and, at the same time, refused to provide employees with the most rudimentary safety equipment or modify the work place, as required by the federal orders and State safety regulations. The operation of the plant continued until the employees were made aware of the situation through the Department of Health examinations and walked out on strike.

Petitioners sued Columbus Coated Fabrics, Columbus Coated Fabrics' officers, and the plant physician, alleging their injuries resulted from willful and intentional acts on the respondents' parts. Petitioners also sued the manufacturers and distributors of the toxic chemicals involved; therefore, the caption of the case is *Charles E. Allen, et al. vs. Eastman Kodak Co., et al.* Petitioners' actions with respect to Columbus Coated Fabrics; Borden's, Inc.; Edward L. Mahoney; Dewey Bennett; and Dr. William T. Paul (the respondents in the case at bar) were dismissed in the Court of Common Pleas of Franklin County, Ohio pursuant to the respondents' motion for summary judgment, on the basis of Ohio Constitution, Article II, Section 35; and Revised Code Sections 4123.74 and 4123.741. Petitioners appealed to the

Court of Appeals of Franklin County, Ohio. The Court of Appeals of Franklin County, Ohio affirmed the judgment of the trial court. As noted previously, the Supreme Court of Ohio overruled the petitioners' motions to certify and dismissed, *sua sponte*, the petitioners' appeal of right.

HOW FEDERAL QUESTIONS PRESENTED

The constitutional questions herein involved were first put in issue in the petitioners' memoranda contra respondents' motion for summary judgments in the Franklin County Common Pleas Court. A more extensive argument was made in the Franklin County Court of Appeals on the same constitutional issues. They were stated again in the petitioners' memoranda in support of jurisdiction in the Supreme Court of Ohio, Case No.'s 76-361 and 76-759.

REASONS FOR GRANTING THE WRIT AS TO QUESTION 1

The petitioners herein worked in a dangerous environment solely because their employers intentionally failed to warn them of dangers known only to themselves, and further intentionally failed to alleviate the known, unsafe conditions existing at the Columbus Coated Fabrics plant. A prime motivating factor in the continuation of respondents' intentional conduct was no doubt the fact that these respondents could rely on Sections 4123.74 and 4123.741 of the Ohio Revised Code to avoid any liabilities for injuries resulting from their intentional acts, other than Workmen's Compensation payments. Since, in Ohio, an employee's right to recover for injuries sustained in the work place is limited to Workmen's Compensation payments, the respondents were able to calculate, with certainty, the limited economic cost of

being required to pay Workmen's Compensation awards arising out of their failures to test, warn, or otherwise protect employees from toxic chemical hazards. By then comparing such costs with lost profits from interrupting production, setting up effective safety programs, or warning their employees, respondents were able to deliberately continue operating when it was profitable for them to do so. It is naive to assume that other employers in Ohio do not make such economic analyses and comparisons when considering the cost of introducing untested, toxic chemicals into their work places.

It has long been held by this Court that the Fifth and Fourteenth Amendments of the United States Constitution protect an array of activities, which our society has commonly recognized as being free from undue governmental control, regulation and influence. At common law, since the earliest days of the Industrial Revolution, our society has recognized an employee's right to be reasonably safe in his place and method of employment. In Ohio, this is a statutory right, as indicated by Ohio Revised Code, Sections 4101.11 and 4101.12. Any state legislation that has the effect of depriving persons of this fundamental liberty must be justified by more than a mere showing of legitimate state interest. Such a legislative scheme cannot paint with a broad brush to blot out personal liberties in accomplishing the purpose of the legislation, but must precisely accomplish the purpose for which it was enacted. This concept was ably stated by this Court in *Kusper vs. Pontikas*, 414 U.S. 51, 38 Lawyer's Edition 2d 260, 94 Supreme Court 303 (1973), 58 and 59:

... "For even when pursuing a legitimate state interest, a state may not choose means that unnecessarily restrict constitutionally protected liberty, *Dunn vs. Blumstein*, 405 U.S. 330 at p. 343 (1971).

'Precision of regulation must be the touchstone in an area so closely touching our most precious freedoms.' *NAACP vs. Button*, 371 U.S. 415 at p. 438 (1962). If the state has open to it a less drastic way of satisfying its legitimate interests, it may not choose a legislative scheme that broadly stifles the exercise of fundamental personal liberties. *Shelton vs. Tucker*, 364 U.S. 479 at p. 488 (1960)."

The Ohio statutes at issue give employers a license to knowingly injure their employees with a minimum of risk. They encourage employers to ignore safety standards in a modern industrial environment wherein the worker has already become the human "guinea pig" for thousands of newly developed and untested toxic chemicals, which are being introduced into the work place each year without governmental regulation or supervision of any meaningful kind. Although the Ohio legislature may have originally addressed some legitimate social interest in enacting Article II, Section 35, Ohio Constitution, and Sections 4123.74 and 4123.741, Ohio Revised Code, any redeeming social value has since been overbalanced by the obvious constitutional deprivations of petitioners' and other employees' rights to liberty in the work place, especially with respect to the immunity from suit these statutes afford employers and their "employees" for intentional torts. It makes a mockery of law to set forth statutory duties of employers concerning the health and welfare of their employees, but, at the same time, allowing and encouraging them to wantonly violate such duties with a minimum of economic risk.

AS TO QUESTION 2

An equal treatment of similarly situated persons by state laws is the essence of equal protection. When the result of a state legislative scheme is to create a class of persons who receive inferior treatment under the law, the state has a heavy burden of showing the basis for such classification is reasonable and substantial. A classification, "must be reasonable, not arbitrary, and must rest on some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike." *Royster Guano Co. vs. Virginia*, 253 U.S. 412, 40 Supreme Court Reporter 560, (1919), 415. State legislation which inherently deprives persons of constitutional rights must be confined to the narrowest possible means of achieving any legitimate legislative purpose. *Dunn vs. Blumstein*, 405 U.S. 330, *supra*; *Kusper vs. Pontikas*, 414 U.S. 51, *supra*. When a statutory classification appears, on its face to create substantial deprivations of constitutional rights for the members of the class, the state must meet certain standards of proof in order to justify the overall constitutionality of the legislative scheme maintaining that class. This Court has outlined the standard in *In Re: Griffiths*, 413 U.S. 717, 37 Lawyer's Edition 2d 910, 93 Supreme Court 2851 (1972), 721 and 722:

. . . "In order to justify the use of a suspect classification, a state must show that its purpose or interest is both constitutionally permissible and substantial, and that its use of the classification is 'necessary . . . to the accomplishment' of its purpose or the safeguarding of its interest."

Also, see *McLaughlin vs. Florida*, 379 U.S. 184, 13 Lawyer's Edition 2d 222, 85 Supreme Court 283 (1964), 196. In this respect, the Court's attention is directed to the fact that the

statutes at issue not only take away petitioners' rights to an action in negligence, but any and all court actions, including actions for intentional torts.

Article II, Section 35, Ohio Constitution, was enacted as a result of the Ohio Constitutional Convention of 1912, but the original section was amended in 1924 to remove the right of an employee to sue for intentional torts or violations of state law. The Ohio Legislature does not maintain a record of its legislative history, but the official minutes of the debates of the 1912 Ohio Constitutional Convention indicate clearly that promoting safety in the work place was a major object of Ohio Constitution, Article II, Section 35:

... "The real object of all liability and compensation laws against industrial accidents, however, is not simply a matter of providing for the needs of the injured and the dependents of those killed, but to prevent accidents; hence, the provision in the proposal that in case accidents are caused by the willful act or violation of law by an employer, an additional penalty is added by giving the worker the right to sue for additional damages. This provision has been made a part of every compensation law so far adopted in this country, as it is with every compensation law so far adopted by foreign countries, and is necessarily attached to compensation laws so that the employer may be compelled to provide every safeguard possible against accidents, and that he may be prevented from getting careless because of the fact that he has paid a premium into the state insurance fund that will provide for the needs of his employees in case they are injured or killed." *Constitutional Convention of Ohio, Proceedings and Debates*, April 23, 1913, p. 1346.

This statement relating to Article II, Section 35, puts the constitutional deprivations at issue herein clearly in focus. Petitioners assert there is no substantial or necessary interest of the State of Ohio in separating out the herein petitioners from other Ohio plaintiffs who have been injured as a result of intentional torts or violations of law. On the contrary, the result of the legislative scheme is exactly opposite of its legislative purpose, for, in practice, the Ohio Workmen's Compensation system denies petitioners and similarly situated persons a fair and speedy system of compensation and encourages employers to create and maintain unsafe conditions in their work places.

In striking down the Ohio guest statute on Fourteenth Amendment grounds, the Ohio Supreme Court stated, in the case of *Primes vs. Tyler*, 43 Ohio State 2d 195, 331 NE 2d 723, (1975) 727:

... "Recognizing that the arbitrary imposition of disabilities '... is contrary to the basic concept of our system that legal burdens should bear some relationship to individual responsibility or wrong doing' (*Jimenez vs. Weinberger* [1974], 417 U.S. 628, 632), Chief Justice Burger states that '... the equal protection clause does enable us to strike down our discriminatory laws ... where ... the classification is justified by no legitimate state interest, compelling or otherwise.' (*Weber vs. Aetna Casualty & Surety Co.* [1972], 406 U.S. 154, 175-176)."

Petitioners situation is no different from those Ohio plaintiffs previously deprived of their rights of action because of the Ohio guest statute. In addition, the Ohio Legislature has recognized and foreclosed one avenue of possible abuse inherent in a no-fault compensation system for in-

dustrial injuries, by denying an employee the payment of benefits for "purposely self-inflicted" injuries. See Ohio Revised Code, Section 4123.54, Appendix D, p. 41. If a worker cannot purposely avail himself of Workmen's Compensation funds, a similar policy rationale should apply to the willful and intentional acts of his employer, who receives the full benefit of the statutory limitations on payments, which clearly fail to adequately compensate an injured worker for his damages.

AS TO QUESTION 3

The Fourteenth Amendment to the United States Constitution provides, *inter alia*, that—

... "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; . . ."

There can be no doubt that state action is present in the case at bar. The Ohio Workmen's Compensation laws at issue provide respondents with a complete bar to any and all court actions for injuries, filed by employees against employers and their "employee," when the employers are covered by that said Workmen's Compensation laws. Ohio courts have consistently held that the sole and sufficient remedy of an employee so situated lies with the Workmen's Compensation laws.

Respondents contend that the Ohio Workmen's Compensation laws provide for fair and speedy compensation for injuries, yet the statutory compensation scheme allows for the payment of only a portion of the total lost wages and makes no provision for the payment of damages for pain and suffering, loss of services of the spouse, and punitive

damages. During 1973, the maximum benefit allowable for a permanent and total disability was limited to two-thirds of the State's average weekly compensation, as calculated by the Ohio Bureau of Workmen's Compensation. For the present petitioners who are permanently and totally disabled, this amounts to \$79.31 per week, or \$4,124.12 per year. Under the Ohio Workmen's Compensation statutes, such payments are fixed in amount forever. The maximum death benefit is only \$21,000.00. Many of the petitioners herein, and thousands of other, similarly situated persons in Ohio, have been reduced to a state of perpetual poverty by the Ohio Workmen's Compensation laws. The courts of Ohio have often cited the advantage of a speedy administrative procedure as a primary legislative basis for justifying the obvious constitutional deprivations arising out of the inadequate Workmen's Compensation benefits. In reality, since employers in Ohio have the right to appeal Workmen's Compensation awards not only through a regional Workmen's Compensation Board of Review, but also to the Ohio Common Pleas Court, Court of Appeals, and Ohio Supreme Court, such a basis for justification is wholly illusory.

The constitutional guarantee of due process will only apply where the petitioner has a legitimate "property" interest within the meaning of the Fourteenth Amendment. "Property" in a constitutional sense is not limited to formalistic rules of ownership and includes any significant property interest or entitlement. As this Court has observed in *Perry vs. Sindermann*, 408 U.S. 593, 33 Lawyer's Edition 2d 570, 92 Supreme Court 2694, (1971), 601:

... "We have made clear in *Roth, supra* (*Board of Regents vs. Roth*, 408 U.S. 564, 33 Lawyer's Edition 2d 548, 92 Supreme Court 2701, (1971), at 571

through 572), that 'property' interests subject to procedural due process protection are not limited by a few rigid, technical forms. Rather, 'property' denotes a broad range of interests that are secured by 'existing rules of understandings.' i.d., at 577. A person's interests in a benefit is a 'property' interest for due process purposes if there are such rules or mutually explicit understandings that support his claim of entitlement to the benefit and that he may invoke at a hearing."

The right of petitioners herein to be adequately compensated for disabling injuries, especially when intentional torts are involved, clearly falls within the category of property rights protected by the Fourteenth Amendment. The statutes at issue herein totally bar petitioners' rights to be heard in the appropriate form wherein their property rights will be fairly and adequately protected. In a most fundamental sense, the Fourteenth Amendment guarantees the petitioners the right to be heard in a forum where adequate compensation is possible. This Court has ably recognized in *Fuentes vs. Shevin*, 407 U.S. 67, (1972), 81, that the Fifth and Fourteenth Amendments of the United States Constitution specifically guarantee persons the right to a fair and appropriate hearing when the taking of a person's property is at issue:

... "The requirement of notice and an opportunity to be heard raises no impenetrable barrier to the taking of a person's possessions. But the fair process of decision making that it guarantees works, by itself, to protect against arbitrary deprivation of property. When a person has an opportunity to speak up in his own defense, when the state must listen to what he has to say, substantively unfair and simply mistaken deprivations of property interest can be prevented."

The total denial of petitioners' rights of access to the Courts of Ohio, the only historically adequate forum wherein petitioners can be fairly compensated, is repugnant to the Fifth and Fourteenth Amendments of the United States Constitution.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that a review of the arbitrary unfair and dangerous practices created and maintained by Article II, Section 35, of the Ohio Constitution and Sections 4123.74 and 4123.741 of the Ohio Revised Code is urgently necessary. It is further respectfully submitted that this Petition for a Writ of Certiorari to the Supreme Court of Ohio should be granted.

Respectfully submitted,

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APPENDICES

APPENDIX A-1

DECISION OF COURT OF APPEALS OF FRANKLIN COUNTY, OHIO (Rendered, February 3, 1976)

Charles E. Allen, et al., :
Plaintiffs-Appellants, :
 vs. : No. 75AP-365
 Eastman Kodak Co., et al., :
Defendants-Appellees. :
 HOLMES, J.

This matter involves the appeal of a summary judgment of the Common Pleas Court of Franklin County as granted to certain of the defendants in an action brought by these plaintiff employees of the defendant Borden, and its Columbus Coated Fabrics Division, against such employer, as well as a number of manufacturers and distributors of certain chemicals used by the Columbus Coated Fabrics company in its manufacturing process, which chemicals were alleged to have occasioned serious and crippling injuries to the plaintiff employees.

The complaint also named as defendants Mr. Edward L. Mahoney, the president of Columbus Coated Fabrics, Mr. Dewey Bennett, the safety director of such company, and Dr. William T. Paul, the physician of Columbus Coated Fabrics.

The defendant employer, as well as Mr. Mahoney, Mr. Bennett, and Dr. Paul, filed motions for summary judgment. Such motions were based upon Article II, Section 35, of the

Ohio Constitution, R.C. 4123.74, which legal provisions preclude an action for damages by an employee against his own employer, and upon R.C. 4123.741, which precludes an action for damages by "any other employee" as against any "employee of any employer."

Upon granting summary judgment for these defendants herein named, the claims as against the manufacturers and distributors of the complained of chemicals were left pending for further proceedings.

The assignments of error of the plaintiffs-appellants are as follows:

"1. The trial court erred in sustaining the Defendants' Borden, Inc., Edward L. Mahoney, Dewey Bennett, and William T. Paul's Motion for a Summary Judgment on the basis of the Ohio Workmen's Compensation laws, Article II, Section 35, Ohio Constitution; and Sections 4123.74 and 4123.741, Revised Code, for these Sections unconstitutionally deprived the Plaintiffs of their 5th Amendment, U.S. Constitution, right to property without due process.

"2. The trial court erred in sustaining the Defendants' Borden, Inc., Edward L. Mahoney, Dewey Bennett, and William T. Paul's Motion for a Summary Judgment on the basis of the Ohio Workmen's Compensation laws, Article II, Section 35, Ohio Constitution; and Sections 4123.74 and 4123.741, Revised Code, for these Sections unconstitutionally deprived the Plaintiffs of their 5th Amendment, U.S. Constitution, right to life and liberty without due process of law.

"3. The trial court erred in sustaining the Defendants' Borden, Inc., Edward L. Mahoney, Dewey Bennett, and William T. Paul's Motion for a Summary Judgment on the basis of the Ohio Workmen's Compensation laws, Article II, Section 35, Ohio Constitution; and Sections 4123.74 and 4123.741, Revised Code, for these Sections unconstitutionally deprived the Plaintiffs of their 14th Amendment, U.S. Constitution, right to equal protection of the laws."

Basically, such assignments of error, and the rather voluminous brief as filed by the plaintiffs-appellants in support thereof, argue that the workmen's compensation law of the state of Ohio, as provided for by the Ohio Constitution and statutory enactment, is contrary to the Constitution of the United States in that such law denies these and other Ohio employees the due process of law as provided by the Fifth Amendment to the Constitution, and denies such employees the "equal protection" of the law as provided for by the Fourteenth Amendment to the Constitution.

We must reject all of the plaintiffs-appellants' assignments of error.

Much of the appellants' argument in support of their claim of unconstitutionality of the workmen's compensation law is based upon their premise that the courts must review the purposes and the legislative intent of such state laws in the light of the changing patterns of manufacturing processes, and the increased use of new and exotic, and potentially physically dangerous, types of chemicals and synthetics.

The argument takes the form that such new and dangerous chemicals could not have been in the minds of the framers of the provisions of the Constitution of the State of Ohio and the minds of the legislative body when such code

sections were enacted, as such would relate to the right of action that employees should be ever granted where personal injuries have been received. Plaintiffs further emphasize that the continuing right to bring legal action for injuries sustained in the course of one's employment should particularly not be denied where it is shown that the employer has not complied with certain safety standards for the protection of such employees.

A number of cases as cited by the appellants in support of such aforestated propositions were decided prior to the adoption of the fountainhead for the authority of the original workmen's compensation provision, Article II, Section 35, of the Ohio Constitution, as adopted in 1912.

Such constitutional provision provided generally for the elimination of the rights of action by employees as against employers for injuries received by the employees. This provision initially provided that rights of action could still be maintained where "lawful requirements" for the protection of lives, health and safety of employees had not been met.

However, effective January 1, 1924, this latter reference to rights of action where "lawful requirements" were not met was amended to specifically preclude a suit for damages by an employee as against an employer covered by the Workmen's Compensation Act, such amendment being in the following terms:

"* * * Such compensation shall be in lieu of all other rights to compensation, or damages, for such death, injuries, or occupational disease, and any employer who pays the premium or compensation provided by law, passed in accordance herewith, shall not be liable to respond in damages at common law or by statute for such death, injuries or occupational disease. * * *"

This constitutional provision has been implemented by the Workmen's Compensation Act which prohibits negligence actions by employees as against a covered employer for injuries received while in the course of their employment, but provides for compensation for injuries or death in conformity with the procedures, findings, and schedules of the Industrial Commission pursuant to the authorization of such chapter of law.

Also, if there be a violation of specific safety requirements as established by the commission, an additional recovery may be awarded pursuant to the following provisions of this constitutional section:

"* * * Such board shall have full power and authority to hear and determine whether or not an injury, disease or death resulted because of the failure of the employer to comply with any specific requirement for the protection of the lives, health or safety of employes, enacted by the General Assembly or in the form of an order adopted by such board, and its decision shall be final; and for the purpose of such investigations and inquiries it may appoint referees. When it is found, upon hearing, that an injury, disease, or death resulted because of such failure by the employer, such amount as shall be found to be just, not greater than fifty nor less than fifteen per centum of the maximum award established by law, shall be added by the board, to the amount of the compensation that may be awarded on account of such injury, disease, or death, and paid in like manner as other awards; * *

In conformity with such constitutional authority, the General Assembly created the Industrial Commission of Ohio and enacted Chapter 41 of Ohio Laws, the chapter of law providing for workmen's compensation, and sections of law providing for the general standards and duties of care as owed by an Ohio Employer to his employees, and to those known as "frequenters," who regularly come upon the premises of the employer.

The Supreme Court of Ohio, prior to the 1924 amendment of Article II, section 35, held that these workmen's compensation laws "embodying in general terms duties and obligations of care and caution," were lawful requirements within the meaning of the Ohio Constitution, and thence held that an action could be brought by an employee as against an employer. *The Ohio Automatic Sprinkler Co. v. Fender* (1923), 108 Ohio St. 149. This interpretation of the workmen's compensation laws was again followed in the case of *Winzeler v. Knox* (1924), 109 Ohio St. 503.

However, as stated, the adoption of the amendment to Article II, section 35, specifically precluded such a suit by an employee, and such language of the amendment stated in effect that the compensation as received by an employee pursuant to laws provided for the compensation of employee injuries, "shall be in lieu of all other rights to compensation or damages * * *."

In harmony with this provision of the Constitution, as amended, was the enactment of R.C. 4123.74, which provides:

"Employers who comply with section 4123.35 of the Revised Code shall not be liable to respond in damages at common law or by statute for any injury, or occupational disease, or bodily condition,

received or contracted by any employee in the course of or arising out of his employment, or for any death resulting from such injury, occupational disease, or bodily condition occurring during the period covered by such premium so paid into the state insurance fund, or during the interval of time in which such employer is permitted to pay such compensation directly to his injured employees or the dependents of his killed employees, whether or not such injury, occupational disease, bodily condition, or death is compensable under sections 4123.01 to 4123.94, inclusive, of the Revised Code."

Since such constitutional amendment, and this specific code section, the Ohio Supreme Court, and other courts in Ohio, have uniformly held that an employee may not sue a complying employer for damages for injuries sustained in his employment. Examples of such cases propounding such law are *State, ex rel. Turner, v. United States Fidelity Co.* (1917), 96 Ohio St. 250; *State, ex rel. Engle, v. Industrial Commission* (1944), 142 Ohio St. 425; *Sebek v. Cleveland Graphite Bronze Co.* (1947), 148 Ohio St. 693; *Bevis v. Armco Steel Corp.* (1949), 86 Ohio App. 525 (appeal dismissed 153 Ohio St. 360); *Greenwalt v. Goodyear Tire & Rubber Co.* (1955), 164 Ohio St. 1; *Daniels v. MacGregor Co.* (1965), 2 Ohio St. 2d 89; and *State, ex rel. Allied Chemical Corp., v. Earhart, Judge*, (1974), 37 Ohio St. 2d 153.

As noted here, the main thrust of the appellants' argument within this appeal is to the effect that these workmen's compensation laws, as interpreted by the Ohio courts, unreasonably limit the rights of an employee to be "fully compensated" for his injuries received within the course of his employment, and in effect force the employee to accept the smaller amount of compensation provided for by the

workmen's compensation law. Such resultant, argue the appellants, is an unconstitutional denial of the employee's right of "due process" and "equal protection" of the law.

The initial portion of the appellant's argument, to the effect that "full compensation" in the form of pain and suffering, and punitive damages, has been denied an employee by the workmen's compensation laws, was early laid to rest in the decision of the Supreme Court of Ohio in the case of *State, ex rel. Crawford v. Industrial Commission* (1924), 110 Ohio St. 271, which decision, as aptly pointed to by counsel for the appellees, quite artfully points out the nature and benefits of these laws. We find the following statement in the decision of the court, at page 274:

"* * * we particularly agree that the law is founded upon the principle of insurance, and that it is in no sense a pension, or bounty, or gratuity. On the other hand, we do not think any one would contend that either the Constitution framers or the General Assembly have ever entertained the thought that full compensation would be made in every case. Before the enactment of this legislation, the only means of compensating injured employees was by means of the ordinary negligence action, and unless negligence could be shown no compensation was recoverable. It was not even in all cases of negligence that there could be a recovery, because there were many defenses that prevented recovery even though negligence of the employer might be proven. * * * It is neither an award of damages nor the imposition of a penalty. It recognizes the fact that the risk of injury or death is an incident of employment in industry, and that this risk has

grown constantly greater by reason of the constantly increasing use of machinery. * * * It was never intended by the most ardent advocates of workmen's compensation to give full and adequate remuneration, because this would remove much of the inducement of working men to exercise care and caution on their own part. At the same time it was plainly seen that industry could not bear an unjust burden, and that any burden so imposed must eventually be charged back in large measure to the consumers of the product of industry. It was therefore sought to provide a reasonable compensation for all injured employes, rather than to give full compensation to the victims of negligence and deny all compensation whatever to employes injured by accidental causes. Our Constitution framers and legislators have had all these matters in mind in determining a sound policy for the establishment and administration of workmen's compensation insurance. This court has nothing to do with the soundness of those policies, and the only justification for a discussion of them in this opinion is to aid in the proper interpretation of the constitutional and statutory provisions."

No Ohio cases have been cited herein which speak directly to the federal constitutional arguments as advanced by these appellants. However, the Supreme Court of the United States, and the Supreme Courts of other states, have upheld other similar statutory provisions as against claims of unconstitutionality.

As pointed out by the appellees herein, the United States Supreme Court considered three coordinated cases involving the constitutionality of the workmen's compensation laws of

the states of New York, Iowa and Washington, in the cases of *New York Central Railroad Co. v. White* (1917), 243 U.S. 188, *Hawkins v. Bleakly* (1917), 243 U.S. 210, and *Mountain Timber Co. v. State of Washington* (1917), 243 U.S. 219.

In upholding the workmen's compensation law of New York, the Supreme Court set forth the following syllabus in the case of *New York Central Railroad Co. v. White, supra*:

"Held: (1) That neither (a) in rendering the employer liable irrespective of the doctrines of negligence, contributory negligence, assumption of risk and negligence of fellow servants, nor (b) in depriving the employee, or his dependents, of the higher damages which, in some cases, might be recovered under those doctrines, can the act be said to violate due process.

"(2) That viewed from the standpoint of natural justice, the system provided by the act in lieu of former rules is neither arbitrary nor unreasonable.

"* * *

"The common-law rules respecting the rights and liabilities of employer and employee in accident cases, viz., negligence, assumption of risk, contributory negligence, fellow-servant doctrine, as rules defining legal duty and guiding future conduct, may be altered by state legislation, and even set aside entirely - at least if some reasonably just substitute be provided."

In amplification of the rationale of these principles, we find the following within the decision, at page 197 thereof:

"In considering the constitutional question, it is necessary to view the matter from the standpoint of the employee as well as from that of the employer.

For, while plaintiff in error is an employer * * * the exemption from further liability is an essential part of the scheme, so that the statute if invalid as against the employee is invalid as against the employer.

"The close relation of the rules governing responsibility as between employer and employee to the fundamental rights of liberty and property is of course recognized. But these rules, as guides of conduct, are not beyond alteration by legislation in the public interest. No person has a vested interest in any rule of law entitling him to insist that it shall remain unchanged for his benefit. * * * The common law bases the employer's liability for injuries to the employee upon the ground of negligence; but negligence is merely the disregard of some duty imposed by law; and the nature and extent of the duty may be modified by legislation, with corresponding change in the test of negligence. * * *"

The Supreme Court, in *Hawkins v. Bleakly*, *supra*, in reviewing the workmen's compensation law of Iowa, held as syllabus law of the case the following:

"* * * A Workmen's Compensation Act, which, prescribing the measure of compensation and the circumstances under which it is to be made, establishes a method of applying the measure to the facts of each case by due hearings before an administrative tribunal, whose action upon all fundamental and jurisdictional questions is subject to judicial review, is not open to objection upon the ground that it clothes the administrative body with an arbitrary and unbridled discretion in violation of due process of law."

Similarly, in the case of *Middleton v. Texas Power & Light Co.* (1918), 249 U.S. 152, the Supreme Court of the United States reviewed the Texas workmen's compensation act, and specifically rejected the assertion that workmen's compensation laws constitute "deprivation of liberty and property without due process of law," and further rejected the claim that such act denied employees affected by the act equal protection of the law.

In *Keller v. Dravo Corporation* (1971), 441 F. 2d 1239 (Fifth Circuit, cert. denied 404 U.S. 1017), the plaintiff contended that "he was unconstitutionally deprived of a property right"—his "right to sue his employer and fellow servants for damages—by the provisions of the Longshoremen's and Harbor Workers' Compensation Act. In rejecting this contention, the court stated that "one cannot be heard to question the sufficiency of due process if the rule of law, which merely held the potential to create a property right, was changed before any right vested," and concluded that "This latter situation is precisely what obtains in the instant case."

In *Massey v. Thiokol Chemical Corporation* (1973), 368 F. Supp. 668 (D.C., S.D. Ga.), the claim that the workmen's compensation law of Georgia denied "due process" and "equal protection" because of denial of "all common law and other remedies to covered employees and their dependents" was rejected.

In *Kazoski v. Consolidation Coal Company* (1974), 368 F. Supp. 1022 (D.C., W.D. Pa.), it was held that the West Virginia workmen's compensation act was not a violation of "due process" by virtue of "the loss of one's right to sue."

It is difficult, if not impossible, to enact perfect legislation pertaining to any field of human endeavor or needs. The laws relating to workmen's compensation, the Industrial

Commission, and the provisions of law enacted to compensate employees for their work-related injuries, and to provide for relief from civil suit to the covered employer, is no exception to the general rule.

Apropos to this point, it is interesting to note that the Ohio General Assembly is currently reviewing the Ohio Laws in this general field and particularly those that relate to the makeup, powers and duties of the Industrial Commission.

The workmen's compensation laws of the state of Ohio may well not be perfection in their attempt to compensate employees for their injuries, but they do indeed provide a reasonably equitable balance between the rights, duties and privileges of both the employee and the employer.

Although these statutes as written, and as administered by the administrator, and the Industrial Commission, may need amendments in certain respects, such laws are not unreasonable or unfair in the constitutional sense. We believe that these laws have provided a fair and reasonable opportunity for employees to be compensated for their injuries, and an opportunity for the families of deceased employees, who have succumbed from industrial injuries, to receive survivor benefits for their reasonable aid and care.

We find no unconstitutional denial of due process, nor a denial of the equal protection of the law, on the face of such statutes. Nor do we find that these plaintiffs have been treated unfairly or unreasonably in the interpretation or application of such laws to their claimed right to relief.

Therefore, all of the assignments of error as set forth by the plaintiffs-appellants are hereby dismissed, and the judgment of the Common Pleas Court of Franklin County is hereby affirmed.

STRAUSBAUGH, P.J. and McCORMAC, J. concur.

APPENDIX A-2

JOURNAL ENTRY OF JUDGMENT IN COURT OF APPEALS, FRANKLIN COUNTY, OHIO

John W. Horn :
Plaintiff-Appellant : CASE NO. 76AP-35
vs :
Eastman Kodak Co., et al. :
Defendants-Appellees :

By agreement of the parties and with leave of Court, the decision of the Court in *Charles E. Allen, et al. vs. Eastman Kodak Co., et al.* Case No. 75AP-365, is hereby adopted as the decision in the consolidated appeal in Case No.'s 76-AP-35, 76AP-36, and 76AP-14. For the reasons stated in the decision of the Court, all Plaintiffs-Appellants' assignments of error are overruled, and it is the JUDGMENT AND ORDER of this Court that the final judgments of the Common Pleas Court of Franklin County, Ohio, filed and journalized on December 31, 1975, December 31, 1975, and December 2, 1975, respectively, which granted summary judgment in favor of Defendants-Appellees Borden, Inc., Columbus Coated Fabrics Division, Edward L. Mahoney, Dewey Bennett, and Dr. William T. Paul and against the Plaintiffs-Appellants with respect to their claims against the Defendants-Appellees is affirmed.

/s/ Robert E. Holmes
JUDGE

/s/ Dean Strausbaugh
JUDGE

/s/ John W. McCormac
JUDGE

APPROVED:

/s/ Philip R. Bradley (WK)
 BRADLEY & FARRIS
 PHILIP R. BRADLEY
Attorney for Appellant

/s/ Robert E. Leach
 VORYS, SATER, SEYMOUR & PEASE
 ROBERT E. LEACH
*Attorneys for Appellees Borden, Inc.,
 Edward L. Mahoney & Dewey Bennett*

/s/ Earl F. Morris
 WRIGHT, HARLOR, MORRIS & ARNOLD
 EARL F. MORRIS
*Attorney for Defendants
 William T. Paul, M.D., Appellee*

APPENDIX B-1

ORDER OF SUPREME COURT OF OHIO

1976 Term

(September 10, 1976)

Charles E. Allen, et al.,	:	Case No. 76-361
<i>Appellants,</i>	:	Motion for an Order
vs.	:	Directing Court of Appeals
Eastman Kodak Co.,	:	for Franklin County
<i>Appellees.</i>	:	To Certify Its Record

It is ordered by the Court that this motion is overruled.

I, Thomas L. Startzman, Clerk of the Supreme Court of Ohio, certify that the foregoing entry was correctly copied from the Journal of this Court.

Thomas L. Startzman
Clerk

APPENDIX B-2

ORDER OF SUPREME COURT OF OHIO

1976 Term

(September 10, 1976)

John W. Horn, et al., : Case No. 76-759
Appellants, : **Motion for Order Directing**
 vs. : **The Court of Appeals**
 Eastman Kodak Co., et al., : **for Franklin County**
Appellees. : **To Certify Its Record**

It is ordered by the Court that this motion is overruled.

I, Thomas L. Startzman, Clerk of the Supreme Court of Ohio, certify that the foregoing entry was correctly copied from the Journal of this Court.

Thomas L. Startzman
Clerk

APPENDIX C-1

ORDER OF SUPREME COURT OF OHIO

1976 Term

(September 10, 1976)

Charles E. Allen, et al., : No. 76-361
Appellants, : **Appeal From**
 vs. : **Court of Appeals**
 Eastman Kodak Co., et al., : **For Franklin County**
Appellees.

This cause, here on appeal as of right from the Court of Appeals for Franklin County, was heard in the manner prescribed by law, and, no motion to dismiss such appeal having been filed, the Court, sua sponte dismisses the appeal for the reason that no substantial constitutional question exists herein.

It is further ordered that a copy of this entry be certified to the Clerk of the Court of Appeals for Franklin County for entry.

I, Thomas L. Startzman, Clerk of the Supreme Court of Ohio, certify that the foregoing entry was correctly copied from the Journal of this Court.

Thomas L. Startzman
Clerk

APPENDIX C-2
ORDER OF SUPREME COURT OF OHIO
1976 Term

(September 10, 1976)

John W. Horn, et al.,	:	Case No. 76-759	
	:	Appeal From	
vs.	:	Court of Appeals	
Eastman Kodak Co., et al.,	:	For Franklin County	
		<i>Appellees.</i>	

This cause, here on appeal as of right from the Court of Appeals for Franklin County, was heard in the manner prescribed by law, and, no motion to dismiss such appeal having been filed, the Court sua sponte dismisses the appeal for the reason that no substantial constitutional question exists herein.

It is further ordered that a copy of this entry be certified to the Clerk of the Court of Appeals for Franklin County for entry.

I, Thomas L. Startzman, Clerk of the Supreme Court of Ohio, certify that the foregoing entry was correctly copied from the Journal of this Court.

Thomas L. Startzman
Clerk

APPENDIX D
CONSTITUTION OF THE UNITED STATES
Amendment V

Rights of Persons

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment XIV

Rights of Citizens

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

CONSTITUTION OF THE STATE OF OHIO

Article II

Section 35 Workmen's compensation.

For the purpose of providing compensation to workmen and their dependents, for death, injuries or occupational disease, occasioned in the course of such workmen's employment, laws may be passed establishing a state fund to be created by compulsory contribution thereto by employers, and administered by the state, determining the terms and conditions upon which payment shall be made therefrom. Such compensation shall be in lieu of all other rights to compensation, or damages, for such death, injuries, or occupational disease, and any employer who pays the premium or compensation provided by law, passed in accordance herewith, shall not be liable to respond in damages at common law or by statute for such death, injuries or occupational disease. Laws may be passed establishing a board which may be empowered to classify all occupations, according to their degree of hazard, to fix rates of contribution to such fund according to such classification, and to collect, administer and distribute such fund, and to determine all right of claimants thereto. Such board shall set aside as a separate fund such proportion of the contributions paid by employers as in its judgment may be necessary, not to exceed one per centum thereof in any year, and so as to equalize, insofar as possible, the burden thereof, to be expended by such board in such manner as may be provided by law for the investigation and prevention of industrial accidents and diseases. Such board shall have full power and authority to hear and determine whether or not an injury, disease or death resulted because of the failure of the employer to comply with any specific requirement for the protection of the lives, health or safety of

employees, enacted by the General Assembly or in the form of an order adopted by such board, and its decision shall be final; and for the purpose of such investigations and inquiries it may appoint referees. When it is found, upon hearing, that an injury, disease or death resulted because of such failure by the employer, such amount as shall be found to be just, not greater than fifty nor less than fifteen per centum of the maximum award established by law, shall be added by the board, to the amount of the compensation that may be awarded on account of such injury, disease, or death, and paid in like manner as other awards; and, if such compensation is paid from the state fund, the premium of such employer shall be increased in such amount covering such period of time as may be fixed, as will recoup the state fund in the amount of such additional award notwithstanding any and all other provisions in this constitution. (As amended November 6, 1923. To take effect January 1, 1924).

OHIO REVISED CODE

Section 4101.11 Duty of employer to protect employees and frequenters.

Every employer shall furnish employment which is safe for the employees engaged therein, shall furnish a place of employment which shall be safe for the employees therein and for frequenters thereof, shall furnish and use safety devices and safeguards, shall adopt and use methods and processes, follow and obey orders, and prescribe hours of labor reasonably adequate to render such employment and places of employment safe, and shall do every other thing reasonably necessary to protect the life, health, safety, and welfare of such employees and frequenters.

Section 4101.12 Duty of employer to furnish safe place of employment.

No employer shall require, permit, or suffer any employee to go or be in any employment or place of employment which is not safe, and no such employer shall fail to furnish, provide, and use safety devices and safeguards, or fail to obey and follow orders or to adopt and use methods and processes reasonably adequate to render such employment and place of employment safe. No employer shall fail to do every other thing reasonably necessary to protect the life, health, safety, and welfare of such employees or frequenters. No such employer or other person shall construct, occupy, or maintain any place of employment that is not safe.

Section 4123.01 Definitions.

As used in Chapter 4123. of the Revised Code:

(A) "Employee," "workmen," or "operative" means:

(1) Every person in the service of the state, or of any county, municipal corporation, township or school district therein, including regular members of lawfully constituted police and fire departments of municipal corporations and townships, whether paid or volunteer, and wherever serving within the state or on temporary assignment outside thereof, and executive officers of boards of education, under any appointment or contract of hire, express or implied, oral or written, including any elected official of the state, or of any county, municipal corporation, or township or members of boards of education;

(2) Every person in the service of any person, firm, or private corporation, including any public service corporation, that (a) employs one or more workmen or operatives regularly in the same business or in or about the same establishment under any contract of hire, express or implied, oral or written,

including aliens and minors, household workers who earn fifty dollars or more in cash in any calendar quarter from a single household and casual workers who earn fifty dollars or more in cash in any calendar quarter from a single employer, or (b) is bound by any such contract of hire or by any other written contract, to pay into the state insurance fund the premiums provided by Chapter 4123. of the Revised Code.

Every person in the service of any independent contractor or subcontractor who has failed to pay into the state insurance fund the amount of premium determined and fixed by the industrial commission for his employment or occupation or to elect to pay compensation directly to his injured and to the dependents of his killed employees, as provided in section 4123.35 of the Revised Code, shall be considered as the employee of the person who has entered into a contract, whether written or verbal, with such independent contractor unless such employees or their legal representatives or beneficiaries elect, after injury or death, to regard such independent contractor as the employer.

(3) If an employer is a partnership, or sole proprietorship, such employer may elect to include as an "employee" within this chapter, any member of such partnership, or the owner of the sole proprietorship. In the event of such election, the employer shall serve upon the commission written notice naming the persons to be covered, include such employee's remuneration for premium purposes in all future payroll reports, and no such proprietor, or partner shall be deemed an employee within this division until such notice has been served.

(B) "Employer" means:

(1) The state, including state hospitals, each county, municipal corporation, township, school district, and hospital owned by a political subdivision or subdivisions other than the state;

(2) Every person, firm, and private corporation, including any public service corporation, that (a) has in service one or more workmen or operatives regularly in the same business or in or about the same establishment under any contract of hire, express or implied, oral or written, or (b) is bound by any such contract of hire or by any other written contract, to pay into the insurance fund the premiums provided by Chapter 4123. of the Revised Code.

All such employers are subject to Chapter 4123. of the Revised Code. Any member of a firm or association, who regularly performs manual labor in or about a mine, factory, or other establishment, including a household establishment, shall be considered a workman or operative in determining whether such person, firm, or private corporation, or public service corporation, has in its service, one or more workmen and the income derived from such labor shall be reported to the Industrial Commission as part of the payroll of such employer, and such member shall thereupon be entitled to all the benefits of an employee.

(C) "Injury" includes any injury, whether caused by external accidental means or accidental in character and result, received in the course of, and arising out of, the injured employee's employment.

(D) "Child" includes a posthumous child and a child legally adopted prior to the injury.

Section 4123.54 Compensation in case of injury or death; agreement if work performed in another state.

Every employee, who is injured or who contracts an occupational disease, and the dependents of each employee who is killed, or dies as the result of an occupational disease contracted in the course of employment, wherever such injury has occurred or occupational disease has been contracted, provided the same were not purposely self-inflicted, is entitled to receive, either directly from his employer as provided in section 4123.35 of the Revised Code, or from the state insurance fund, such compensation for loss sustained on account of such injury, occupational disease or death, and such medical, nurse, and hospital services and medicines, and such amount of funeral expenses in case of death, as are provided by sections 4123.01 to 4123.94, inclusive, of the Revised Code.

Whenever, with respect to an employee of an employer who is subject to and has complied with sections 4123.01 to 4123.94, inclusive, of the Revised Code, there is possibility of conflict with respect to the application of workmen's compensation laws because the contract of employment is entered into and all or some portion of the work is or is to be performed in a state or states other than Ohio, the employer and the employee may agree to be bound by the laws of this state or by the laws of some other state in which all or some portion of the work of the employee is to be performed. Such agreement shall be in writing and shall be filed with the industrial commission within ten days after it is executed and shall remain in force until terminated or modified by agreement of the parties similarly filed. If the agreement is to be bound by the laws of this state and the employer has complied with sections 4123.01 to 4123.94, inclusive, of the Revised Code, then the employee is entitled to compensation and benefits

regardless of where the injury occurs or the disease is contracted and the rights of the employee and his dependents under the laws of this state shall be the exclusive remedy against the employer on account of injury, disease, or death in the course of and arising out of his employment. If the agreement is to be bound by the laws of another state and the employer has complied with the laws of that state, the rights of the employee and his dependents under the laws of that state shall be the exclusive remedy against the employer on account of injury, disease, or death in the course of and arising out of his employment without regard to the place where the injury was sustained or the disease contracted.

If any employee or his dependents are awarded workmen's compensation benefits or recover damages from the employer under the laws of an other state, the amount so awarded or recovered, whether paid or to be paid in future installments, shall be credited on the amount of any award of compensation or benefits made to the employee or his dependents by the industrial commission.

If an employee is a resident of a state other than this state and is insured under the workmen's compensation law or similar laws of a state other than this state, such employee and his dependents are not entitled to receive compensation or benefits under sections 4123.01 to 4123.94, inclusive, of the Revised Code, on account of injury, disease, or death arising out of or in the course of employment while temporarily within this state and the rights of such employee and his dependents under the laws of such other state shall be the exclusive remedy against the employer on account of such injury, disease, or death.

Section 4123.74 Employer's liability in damages.

Employers who comply with section 4123.35 of the Revised Code shall not be liable to respond in damages at common law or by statute for any injury, or occupational disease, or bodily condition, received or contracted by any employee in the course of or arising out of his employment, or for any death resulting from such injury, occupational disease, or bodily condition occurring during the period covered by such premium so paid into the state insurance fund, or during the interval of time in which such employer is permitted to pay such compensation directly to his injured employees or the dependents of his killed employees, whether or not such injury, occupational disease, bodily condition, or death is compensable under sections 4123.01 to 4123.94, inclusive of the Revised Code.

Section 4123.741 Fellow employee's immunity from suit.

No employee of any employer, as defined in division (B) of section 4123.01 of the Revised Code, shall be liable to respond in damages at common law or by statute for any injury or occupational disease, received or contracted by any other employee of such employer in the course of and arising out of the latter employee's employment, or for any death resulting from such injury or occupational disease, on the condition that such injury, occupational disease, or death is found to be compensable under sections 4123.01 to 4123.94, inclusive, of the Revised Code.